

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

KENNETH A. FURBER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-152
Case No. 72-7791

S.S.A. No.

The claimant appealed from Referee's Decision No. OAK-11892 which affirmed a determination of the Department that the claimant was ineligible for benefits beginning May 14, 1972 on the ground that he was not unemployed within the meaning of section 1252 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant had been self-employed in the construction clean-up business for approximately six years. In April of 1971 he incorporated the business and became the president and sole stockholder of the corporation.

Approximately 98 percent of the corporate income came from a contract with a construction company. This contract expired in the first week of April 1972 and the claimant was unable to renew it. He sought other work for the corporation but without success and has abandoned the idea of using the corporate structure for the operation of his business.

Effective May 14, 1972 the claimant filed a claim for unemployment insurance benefits. His regular and customary work is that of a truck driver or tractor operator and the claimant sought such work.

Since May 14, 1972 the claimant has performed no work for the corporation except to engage in the liquidation of its assets to pay outstanding obligations of the corporation. The last wages the claimant received from the corporation were paid with respect to the month of April 1972.

The claimant remains as president of the corporation and as sole stockholder. If work were offered to him in which he could activate the corporate structure, he would accept the work and engage in business as a corporation. However, the claimant has abandoned efforts to seek work for the corporation and is seeking work for himself as an employee in his regular and customary occupations. He has disposed of most of the corporation's equipment.

REASONS FOR DECISION

Section 1252 of the Unemployment Insurance Code provides in part as follows:

"An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

In Appeals Board Decision No. P-B-140, we considered the issue under section 1252 of the code with respect to a husband and wife who were the sole stockholders of a corporation and its corporate officers, engaged in a seasonal food concession business. The claimants had filed claims for unemployment insurance benefits during the off-season.

In that case we stated:

"In the present case the claimants control their employment. It is their decision to stop their salaries as corporate officers during the off-season. They alone determine when they will or will not work; how much they will be paid for such work; and, when and for what periods the payments will be made. Though they may engage in little or no activity on behalf of the corporation during the off-season, in their capacity as corporate officers they must be prepared at all times to take appropriate action when the affairs of the corporation so require. In fact, they are in service of the corporation as its officers during the entire calendar year. Although they receive no salary for such service during the off-season,

it was their choice to be paid only during the fair and carnival season."

Section 100 of the code provides in part for the establishment of a system of unemployment insurance providing benefits for persons "unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." In Appeals Board Decision No. P-B-140, we held the claimants to be ineligible because they were not involuntarily unemployed but in fact controlled their own employment. We here reaffirm that decision.

However, the instant case is readily distinguishable from Appeals Board Decision No. P-B-140. The claimant herein is involuntarily unemployed because of the loss of the contract which produced almost all of the corporation's income. Since the filing of his claim corporate activity has been minor and limited to the liquidation of the assets of the corporation. During this period the corporation had little or no expectation of operating but was a mere shell. The claimant has abandoned all efforts to keep the corporation active and he has disposed of most of its equipment. Thus, he did not control his own employment. He was primarily and actively engaged in seeking employment in his regular and customary occupations outside of the corporate activity. Accordingly, we hold that under these limited circumstances, the claimant is an unemployed individual within the meaning of section 1252 of the Unemployment Insurance Code.

DECISION

The decision of the referee is reversed. The claimant is not ineligible for benefits under section 1252 of the code. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, March 15, 1973

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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